

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 11, 2012

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chu, Constant, Liccardo, Nguyen, Oliverio, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Pyle. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: City Clerk's Office; Title: Acting City Clerk. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in three (2) matters. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) IAFF Local 230 v. City of San José; Names of Parties Involved: International Association of Firefighters, Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No. SF-CE-970-M; Amount of Money or Other Relief Sought: Damages according to proof. (D) to confer with Legal Counsel with respect to Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property: 62 South Second Street, San Jose, California; Negotiating Parties: Richard Keit and Kelly Hyland for the Successor Agency to the Redevelopment Agency of the City of San José and the City of San José and Ronald Wendel for Comedy Club of San José, LLC (The Improv); Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated Price based on appraisal and comparable property values.

CLOSED SESSION (Cont'd.)

(E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150. (F) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation pertaining to the Successor Agency to the Redevelopment Agency of the City of San José in three (2) matters. (G) to confer with Legal Counsel with respect to Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property: 62 South Second Street, San Jose, California; Negotiating Parties: Richard Keit and Kelly Hyland for the Successor Agency to the Redevelopment Agency of the City of San José and the City of San José and Ronald Wendel for Comedy Club of San José, LLC (The Improv); Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated Price based on appraisal and comparable property values.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:55 a.m. and reconvened to Regular Session at 1:35 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio (1:57 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Tahir Anwar, South Bay Islamic Association, presented the Invocation. (Mayor)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.4 deferred to January 15, 2013. (10-0-1. Absent: Oliverio.)

CLOSED SESSION REPORT

Mayor Reed disclosed the following Closed Session actions of December 11, 2012:

- A. Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957:

Department: City Clerk's Office.

Title: Toni Taber, Acting City Clerk.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to S.E.A. Medical Systems, Inc., for their continued service and development as a vibrant and prosperous business and community partner in the City of San José. (Chu)**

Mayor Reed and Council Member Chu recognized and commended S.E.A. Medical Systems, Inc.

- 1.2 Presentation of a commendation to the following supporters for their dedication and commitment to the Dr. Martin Luther King, Jr., Association of Santa Clara Valley community forums co-sponsored by Council Member Kansen Chu, Sam Van Zandt, Dr. Agi Schenley, Robert Lopez, Robert O'Donnell, and Hector Oropeza. (Chu)**

Action: Deferred to January 15, 2013.

- 1.3 Presentation of a commendation to the Responsible Landlords Engagement Initiative team for their efforts to encourage and motivate landlords and new investors to commit to maintain their properties in good standing. (Pyle)**

Mayor Reed and Council Members Pyle and Kalra recognized and commended the Responsible Landlords Engagement Initiative team.

- 1.4 Presentation of a commendation to the San José Park Ranger Program for their 40th Anniversary. (Pyle)**

Mayor Reed and Council Member Pyle recognized and commended the San José Park Ranger Program.

- 1.5 Presentation of a commendation to City Clerk Dennis D. Hawkins for his excellence and years of service to the City of San José. (Mayor/Council Members)**

Mayor Reed and the Council Members recognized and commended City Clerk Dennis D. Hawkins.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

- 2.1 Approval of Minutes.**

There were none.

- 2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 29181 – Amending Chapter 4.16 of Title 4 of the San José Municipal Code to amend Section 4.16.260 and add a new Section 4.16.290 to provide the Director of Finance discretion to determine the disposition of surplus property of nominal value and to delegate authority to the Police Chief for the disposition of police service dogs and police firearms.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29181 executed on November 30, 2012, submitted by the City Clerk.

2.2 (a) (Cont'd.)

Action: Ordinance No. 29181 was adopted. (11-0.)

- (b) ORD. NO. 29182 – Rezoning certain real property situated on the southwest corner of Saratoga Avenue and Kiely Boulevard (403 Saratoga Avenue) to the CN-Commercial Neighborhood Zoning District. C12-021**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29182 executed on November 30, 2012, submitted by the City Clerk.

Action: Ordinance No. 29182 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) Transportation and Environment Committee Report of November 5, 2012. (Liccardo)**
(b) Neighborhood Services and Education Committee Report of November 8, 2012. (Pyle)
(c) Public Safety, Finance and Strategic Support Committee Report of November 15, 2012. (Constant)

Documents Filed: (1) Transportation and Environment Committee Report dated November 5, 2012. (2) Neighborhood Services and Education Committee Report dated November 8, 2012. (3) Public Safety, Finance and Strategic Support Committee Report dated November 15, 2012.

Action: The Council Committee Reports were approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Mayor Reed and Council Member Rocha presented highlights of their trip to Washington D.C. with the Silicon Valley Advocacy Group. Council Member Constant provided details of his trip to San Diego, California to attend the International Foundation of Employee Benefits Conference.

2.6 Report from the Council Liaison to the Retirement Boards.

Council Member Constant presented a summary of the Police and Fire Retirement Board Meeting.

- 2.7 Approve a Housing Trust Fund grant of up to \$260,000 to EHC LifeBuilders for the implementation of a San José Downtown Homeless Outreach and Engagement program. CEQA: Not a Project, File No. PP10-066 (e), Agreements/Contracts. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated November 5, 2012, recommending approval of a grant.

Action: A Housing Trust Fund grant of up to \$260,000 to EHC LifeBuilders for the implementation of a San José Downtown Homeless Outreach and Engagement program was approved. (11-0.)

- 2.8 Approve a Lease of Airport Premises with SJJC Airline Services, LLC, for ramp and office space in support of its commercial airline fueling operations, retroactive from October 1, 2012 through September 30, 2014. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)**

Documents Filed: Memorandum from Director of Aviation Services William F. Sherry, A.A.E., dated November 19, 2012, recommending approval of a lease.

Action: A Lease of Airport Premises with SJJC Airline Services, LLC, for ramp and office space in support of its commercial airline fueling operations, retroactive from October 1, 2012 through September 30, 2014 was approved. (11-0.)

- 2.9 (a) Adopt a resolution authorizing the City Manager to execute the First Amendment to Retrofit California Sub-Awardee Agreement between the Association of Bay Area Governments and the City of San José to accept the Federal Department of Energy grant increase of \$38,479, for a total grant of \$788,479.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Increase the estimated Revenue from the Federal Government – Recovery Act, in the amount of \$38,479.**
 - (2) Increase the City-wide Appropriation to the Environmental Services Department, Recovery Act – Retrofit California in the amount of \$38,479.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services/City Manager's Office)

Action: Deferred to December 18, 2012 per Administration.

- 2.10 Approve a Change Order General Conditions Amendment to the Master Service Agreement with Pacific Gas and Electric (PG&E) to extend the term through March 31, 2013 for the Silicon Valley Energy Watch Program. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services)**

2.10 (Cont'd.)

Action: Deferred to December 18, 2012 per Administration.

2.11 Adopt a resolution:

- (a) Authorizing the City Manager, or designee, to submit two grant applications in an amount not to exceed \$350,000 each to the State of California Natural Resources Agency under the Environmental Enhancement and Mitigation Program (EEMP) grant with no local match required to supplement existing funding for:**
 - (1) Coyote Creek Trail (Tasman Drive to Montague Expressway).**
 - (2) Thompson Creek Trail (Quimby Road to Aborn Court).**
- (b) Certifying that City agrees to comply with assurances in the EEMP application as set forth in this memorandum and the proposed resolution;**
- (c) Certifying that the City has or will have sufficient funds to operate and maintain the completed projects.**
- (d) Delegating the authority to the City Manager, or designee, to accept any grant funding and conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the projects.**

CEQA: Mitigated Negative Declaration, File No. PP03-07-230 (Coyote Creek Train) and File No. PP04-283 (Thompson Creek Trail). (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated November 19, 2012, recommending adoption of a resolution.

Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano responded to questions from Council Member Herrera.

Action: Upon motion by Council Member Herrera, seconded by Council Member Oliverio and carried unanimously, Resolution No. 76506, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager, Or Designee, To Execute and Submit Two Applications to the State of California Natural Resources Agency Under the Environmental Enhancement and Mitigation Program (EEMP) for a Grant for the Coyote Creek Trail (Tasman Drive to Montague Expressway) and a Grant for the Thompson Creek Trail (Quimby Road to Aborn Court) In An Amount Not To Exceed \$35,000 Each; Certifying that City Agrees to Comply With Assurances in the EEMP Application; Certifying that the City Has or Will Have Sufficient Funds to Operate and Maintain the Completed Projects; and Delegating Authority to the City Manager, or Designee, To Accept Any Grant Funding If Awarded and To Conduct All Negotiations, Execute and Submit All Related Documents", was adopted. (9-0-2. Absent: Pyle, Rocha.)

2.12 Adopt a resolution:

- (a) **Accepting and confirming the 2013-2014 Hazardous Vegetation Commencement Report compiled by the Santa Clara County Department of Agriculture and Resource Management;**
- (b) **Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the report are a nuisance.**
- (c) **Directing the Santa Clara County Department of Agriculture and Resource Management to mail notices of a public hearing before the City Council, on January 8, 2013 at 1:30 p.m., on the report to property owners of affected real properties, pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

CEQA: Exempt, File No. PP08-245. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 19, 2012, recommending adoption of a resolution.

Action: Resolution No. 76507, entitled: “A Resolution of the Council of the City of San José Accepting and Confirming the Hazardous Vegetation Commencement Report for the Year 2013-2014 Compiled by the Santa Clara County Department of Agriculture and Resource Management; Declaring Certain Noxious or Dangerous Seasonal and Recurrent Weeds Are Growing or Are Likely to Grow Upon Certain Public and Private Properties Or That Refuse Is Situated Or Likely To Be Situated Upon Certain Properties Within the City of San José; Declaring Such Seasonal and/or Recurrent Weeds and Refuse a Public Nuisance; and Directing that Notice of this Resolution and a Public Hearing on the Report on December 11, 2012 at 1:30 p.m. Be Given Pursuant to Chapter 9.12 of the San José Municipal Code”, was adopted. (11-0.)

2.13 Accept the Fiscal Year 2011 – 2012 Annual Development In-Lieu Fee Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 19, 2012, recommending acceptance of the report.

Action: The Fiscal Year 2011 – 2012 Annual Development In-Lieu Fee Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements, was accepted. (11-0.)

- 2.14 Adopt a resolution summarily vacating a portion of a 26-foot wide sanitary sewer easement lying on the property owned by Village Oaks Retail, LLC, located on the northerly portion of Lot four and Lot six created as part of Tract 9952 and more specifically the boundaries of said lots (APN 706-07-009, 011). CEQA: Hitachi Campus and Mixed-Use Transit Village Project EIR, File No. PDC04-031, Resolution No. 72772. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 19, 2012, recommending adoption of a resolution.

Action: Resolution No. 76508, entitled: “A Resolution of the Council of the City of San José Vacating a Portion of a Public Sanitary Sewer Easement Located on the Northerly Portion of Lot 4 and Lot 6 Created as Part of Tract 9952”, was adopted. (11-0.)

- 2.15 Approve travel by Mayor Reed to Des Moines, Iowa on November 8 – 9, 2012 to meet with Governor Terry Branstad and the Taxpayers Association of Central Iowa. Source of Funds: Mayor’s Office Fund (airfare to Iowa; return trip will be paid for with personal funds), Taxpayers Association of Central Iowa. (Mayor) [Rules Committee referral 12/05/12 – Item G(2)]**

Documents Filed: Memorandum from Mayor Reed, dated November 8, 2012, requesting approval of travel.

Council Member Kalra expressed concern about this particular trip as opposed to other trips because of the connection with the Taxpayers Association of Central Iowa.

Motion: Council Member Constant moved approval of the travel request from Mayor Reed. Council Member Herrera seconded the motion.

A brief discussion ensued.

Action: On a call for the question, the motion carried, the travel request for Mayor Reed to fly to Des Moines, Iowa on November 8 – 9, 2012 to meet with Governor Terry Branstad and the Taxpayers Association of Central Iowa, was approved. (9-2. Noes: Campos, Kalra.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

City Manager Debra Figone reported that she will circulate an information memorandum to the Council pertaining to the current retirement forecast from Cheiron. City Manager Debra Figone noted that the last forecast from Cheiron was in February 2012.

**3.3 Adopt a resolution declaring the results of the November 6, 2012 Municipal Election pursuant to Elections Code Section 15400. (City Clerk)
(Rules Committee referral 11/28/12)**

Documents Filed: (1) Memorandum from City Clerk Dennis D. Hawkins, CMC, dated November 30, 2012, recommending adoption of a resolution. (2) Supplemental memorandum from City Clerk Dennis D. Hawkins, CMC, dated December 5, 2012, transmitting information regarding the certification of the November 2012 Presidential General Election by the County of Santa Clara Registrar of Voters.

Motion: Council Member Oliverio moved approval of the Staff recommendations. Council Member Constant seconded the motion.

Public Comments: Ross Signorino expressed support to the minimum wage pay raise of \$10.00/hour.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76509, entitled: “A Resolution of the Council of the City of San José Reciting that a Regular Municipal Election and Special Municipal Election Was Held in the City of San José on Tuesday, November 6, 2012; Stating the Offices To Be Filled at the Election and Confirming the Passage of Measure D and Failure of Measure E; Finding and Declaring that the Registrar of Voters of the County of Santa Clara Has Canvassed the Returns of the Election and Confirming the Results of the Canvass; Stating the Whole Number of Votes Cast, The Names of the Persons and Offices Voted For, The Names of the Measures Voted For, The Number of Votes Given at Each Precinct to Each Person and The Measures; and Finding and Declaring Who Received the Highest Number of Votes of the Votes Cast, and That Measure D Received a Majority of the Votes Cast and Measure D Did Not Receive a Majority of the Votes Cast”, was adopted. (10-0-1. Absent: Nguyen.)

**3.4 Approve the Board and Commission Program Work Plan. (City Clerk)
(Rules Committee referral 11/28/12)**

Action: Deferred to January 15, 2013 per Orders of the Day.

**3.5 Authorize the City Clerk to expend \$10,000 in payment of a reward for assistance in the arrest and conviction of the perpetrator of a violent crime. CEQA: Not a Project, File No. PP10-069, City organizational and administrative activities. (City Clerk)
(Rules Committee referral 11/28/12)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated November 30, 2012, recommending authorization to expend \$10,000 in payment of a reward.

Action: Item 3.5 was dropped.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Adopt a resolution:

- (a) **Declaring 28,990 square feet of vacated street on Emory Street, surplus to the needs of the City.**
- (b) **Approving an agreement between the City of San José and Bellarmine College Preparatory (Bellarmine) for sale of the property in the amount of \$325,000.**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

CEQA: Mitigated Negative Declaration, File No. PDC07-072. (Economic Development)

Action: Deferred to December 18, 2012 per Administration.

4.2 **Consideration of an ordinance rezoning the real property located on the east side of Cottle Road between Raleigh Road and Coronado Avenue from IP(PD) Planned Development Zoning District to the CN – Commercial Neighborhood Zoning District on a 8.26-acre site (Village Oaks Retail, LLC). CEQA: Envision San José 2040 General Plan Final Program EIR, File No. PP09-011, Resolution No. 76041. C12-030 – District 2. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Council Member Kalra, dated December 10, 2012, recommending approval of the Staff recommendations but to consider certain factors upon the consideration of the anticipated Conditional Use Permit Application. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-030, dated November 26, 2012, recommending approval of the subject rezoning. (3) Proof of Publication of Notice of Public Hearing, executed on November 23, 2012, submitted by the City Clerk. (4) Letter from the Law Offices of Linda J. LeZotte, LEED AP, dated December 6, 2012, expressing opposition to the rezoning application. (5) Letter from Hunter Storm, Owner/Applicant, dated December 11, 2012, expressed support to the proposed rezoning. (6) Letter from Greenbelt Alliance, dated December 10, 2012, regarding the proposed rezoning.

Mayor Reed provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented comments.

Mayor Reed opened the public hearing.

Public Comments: Linda J. LeZotte, Attorney, representing the interests of several gas station operators, expressed opposition to the proposed rezoning because Hunter Properties seeks to negate the prior community input and the years of planning which resulted in the Planned Development for the Hitachi site.

Mayor Reed closed the public hearing.

4.2 (Cont'd.)

Motion: Council Member Kalra moved approval of his memorandum dated December 10, 2012, recommending approval of the Staff recommendations, with the conditions to consider certain factors upon the consideration of the anticipated Conditional Use Permit Application. Council Member Oliverio seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel, Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti and Assistant City Manager Edward K. Shikada responded to Council questions and concerns.

Council discussion ensued.

Council Members Constant and Liccardo provided meeting disclosures

Vice Mayor Nguyen and Council Member Rocha expressed concern about setting a precedent regarding Urban Villages and that the proposed rezoning obviates the concepts of the Urban Village development which was contentiously crafted by the 2040 General Plan Task Force and was adopted by the City Council.

Council Member Liccardo requested to amend the motion to strike Item (5) on Page 2 of the memorandum from Council Member Kalra: Whether the owner of the gas station would engage in the intentional lowering of prices, thus creating an unfair advantage over other local gas stations. The amendment was accepted by Council Members Kalra and Oliverio and Item (5) was deleted from the motion.

Action: On a call for the question, the motion carried, the recommendation of the Planning Director was approved, the memorandum from Council Member Kalra, dated December 10, 2012, was approved: including, Staff was directed to carefully consider the following factors when assessing the application for a Conditional Use Permit: (1) Whether the presence of a gas station will negatively impact the goals of having an Urban Village that is both easily accessible and pedestrian and bicycle friendly. (2) The impact that a gas station will have in terms of its orientation with Cottle Road and other streets and stacking of vehicles, which could create additional traffic and air pollution. (3) The immediate and ongoing environmental impacts that may result from the infrastructural requirements for a gas station, including the impact from installing underground storage tanks. (4) The number of pumps that would be permitted and (5) was deleted, Ordinance No. 29189, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 8.26 Acres in Size Situated on the East Side of Cottle Road Between Coronado Avenue and Raleigh Road from IP (PD) Planned Development Zoning District to the CN Commercial Neighborhood Zoning District", was passed for publication. (9-2. Noes: Nguyen, Rocha.)

- 4.3 Consideration of an ordinance prezoning the real property located on the southeast side of Alum Rock Avenue, approximately 150 feet northeasterly of Sunnyslope Avenue (4700 Alum Rock Avenue) as R-1-8(PD) Planned Development Zoning District to allow for the demolition of two (2) single-family detached homes and development of up to three (3) new single-family detached homes on a 0.66 gross-acre site (House, Dolly S Trustee, Owner). CEQA: Exempt.
PDC11-008 – District 5. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC11-008, dated November 5, 2012, recommending approval of the subject prezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 15, 2012, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on October 26, 2012, submitted by the City Clerk.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Campos, seconded by Council Member Oliverio and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 29190, entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the South Side of Alum Rock Avenue, Approximately 150 Feet Northeasterly of Sunnyslope Avenue (4700 Alum Rock Avenue) From Unincorporated County Property to the R-1-8 (PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Constant.)

- 4.4 Consideration of an ordinance rezoning the real property located at the northwest corner of Lincoln Avenue and Auzerais Avenue (393 Lincoln Avenue) from LI Light Industrial to CIC Combined Industrial/Commercial on a 0.44 gross acre site (Anthony and Madalyn Kralyevich, trustee, owner). CEQA: Envision San José 2040 General Plan Final Program EIR, File No. PP09-011, Resolution No. 76041.
C12-015 – District 6. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-015, dated November 16, 2012, recommending approval of the subject rezoning. (2) Memorandum from Planning Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 22, 2012, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 23, 2012, submitted by the City Clerk.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

4.4 (Cont'

Action: Upon motion by Council Member Oliverio, seconded by Council Member Campos and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 29191, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Lincoln Avenue and Auzerai Avenue on a 0.44 Gross Acre Site (393 Lincoln Avenue) to the CIC Combined Industrial/Commercial Zoning District", was passed for publication. 10-0-1. Absent: Constant.)

4.5 **Consideration of an ordinance to approve a Development Agreement with Riverview Apartment Development, LLC (Irvine Company) to reconfigure a previously approved residential project in the North San José Area Development Policy area subject to performance by IAC for payment of contributions, commencement of construction and subsequent occupancy per deadlines of performance to construct a modified design at the northwest corner of North First Street and River Oaks Place. (Wyse Technology Investments, Inc., Owner). CEQA: North San José Area Development Policy Update EIR, File No. GP04-T-03, EIR Resolution No. 72768 and Addenda thereto. Planning Commission recommends approval (5-0-2; Kamkar and O'Halloran).**

DA12-003 – District 4. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 6, 2012, transmitting the Development Agreement and the Planning Commission recommendation of approval. (2) Proof of Publication of Notice of Public Hearing, executed on November 16, 2012, submitted by the City Clerk.

Mayor Reed and Council Members Liccardo, Rocha and Campos provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided comments and responded to Council questions.

Mayor Reed opened the public hearing.

Public Comments: Dan Miller, Irvine Company, expressed support to the Staff recommendations and pointed out that this was Irvine Company's third project in North San José.

Mayor Reed closed the public hearing.

Motion: Council Member Chu moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

4.5 (Cont'd.0

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and Planning Director was approved, Ordinance No. 29192, entitled: "An Ordinance of the City of San José Approving a Development Agreement with Riverview Development Company, LLC, Relative to the Development of the Riverview Project on Certain Real Property Located in North San José and Authorizing the City Clerk to Execute the Development Agreement and Cause the Same to be Recorded with the Santa Clara Recorder's Office", was passed for publication. (10-0-1. Absent: Constant.)

PUBLIC SAFETY SERVICES

- 8.1 (a) **Approve an award to purchase Cardiac and Automatic External Defibrillators to Physio-Control, Inc. (Redmond, WA) for a total cost not to exceed \$1,521,792, including equipment accessories, five-year maintenance and support service, wireless transmission technology; training, testing, delivery, and sales tax, and authorize the City Manager to execute the purchase order.**
- (b) **Authorize the City Manager to execute purchase orders as required for ongoing maintenance and support and purchase additional quantities of Cardiac and Automatic External Defibrillator equipment, subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-066(a), Purchase Order for the purchase of supplies and equipment with no change in the physical environment. (Finance)

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper, dated November 19, 2012, recommending approval of an award to purchase/purchase orders and authorization for the City Manager to execute.

Division Manager of Finance Mark Giovannetti responded to Council questions.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, an award to purchase Cardiac and Automatic External Defibrillators to Physio-Control, Inc. for a total cost not to exceed \$1,521,792, including equipment accessories, five-year maintenance and support service, wireless transmission technology; training, testing, delivery, and sales tax was approved and the City Manager was authorized to execute the purchase order and the City Manager was authorized to execute purchase orders as required for ongoing maintenance and support and purchase additional quantities of Cardiac and Automatic External Defibrillator equipment, subject to the appropriation of funds. (11-0.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Approve an amendment to the Promissory Note with Urban Markets, LLC (Developer) which, among other things, reduces the loan amount and modifies the repayment terms. (Successor Agency) (Rules Committee referral 11/28/12)

Documents Filed: Memorandum for City Manager/Executive Officer Debra Figone, dated December 7, 2012, recommending approval of an amendment.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

Council Members Kalra and Campos expressed opposition to the motion on the floor.

City Attorney Richard Doyle responded to Council questions and concerns.

Action: On a call for the question, the motion carried, the amendment to the Promissory Note with Urban Markets, LLC which, among other things, reduces the loan amount and modifies the repayment terms, was approved. (9-2. Noes: Campos, Kalra.)

OPEN FORUM

- (1) Robert Pineda voiced concerns with the Staff at Grace Baptist.
- (2) Ross Signorino congratulated and thanked Council Member Pyle for her leadership and dedicated community service to the resident of the City of San José.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:18 p.m. in memory of Anthony (Tony) Di Maggio, owner and operator of Tony Di Maggio's Pizza since 1977, who passed away on November 25, 2012, after a lifetime of public service to the residents of the City of San José. (Nguyen)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

smd/12-11-12 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoecga.gov/city> or <http://www.sanjoecga.gov/civiccenter/tv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at the southeast corner of Mabury Road and Educational Park Drive (12710 Mabury Road) from A Agricultural Zoning District to A(PD) Planned Development Zoning District to allow up to 20 single family detached homes on a 3.42 gross acre site (Sabatino Murphy A Jr Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration.
PDC12-010 – District 4**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 2, 2012, submitted by the City Clerk.

Action: Dropped. To Be Renoticed.

- 11.3 (a) Approve an ordinance of the City of San José amending Chapter 13.32 of Title 13 of the San Jose Municipal Code, and amending Sections 20.100.140 and 20.100.220 of Chapter 20.100 of Title 20, to modify the tree removal requirements for single-family residences in order to streamline permitting processes and further implement the Community Forest Goal and Policies set forth within the Envision San Jose 2040 General Plan, to modify permit recordation requirements for tree removal and certain other permits, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13 and Title 20; and**
- (b) Adopt a Resolution setting forth the tree species to be placed on the unsuitable tree list as eligible for the modified tree removal requirements for single-family residences.**

CEQA: Final Program EIR for Envision San José 2040 General Plan, File No. PP12-098, EIR Resolution No. 76041.

Citywide

Action: Deferred to December 18, 2012 per the Rules and Open Government Committee.